

Minutes of the Bench Bar Committee
Topeka Courtroom 210
August 30, 2006

Members Present: Laurie Williams, Chapter 13 Representative and Committee Chair
Hon. Janice M. Karlin, Judges Representative
Joyce G. Owen, US Trustee Representative
Emily B. Metzger, Standing US Attorney's Office Representative
Jay Befort
Douglas Depew
Wesley Smith
Jeffrey Deines
Susan Saidian
Bob Kumin
Chris Redmond

Guest(s) Present: Hon. Robert E. Nugent, Hon. Dale L. Somers

Court Staff Present: Hugh Zavadil, Clerk's Representative

The meeting was called to order at 10:10 a.m. Judge Karlin welcomed Robert Kumin to the committee.

1. **Approve minutes of the 4/3/06 meeting.** No one had any comments or changes to the minutes of the last meeting. Judge Karlin made a motion to accept the April minutes as written. Doug Depew seconded the motion. Motion was voted on and approved.
2. **Standing Order 06-03.** Judge Karlin questioned whether the Committee was in favor of the Court rescinding its Standing Order 06-03 Required Form Regarding Payment Advices (which requires every individual debtor to complete the Declaration—not just those without payment advices) in favor of the Committee's suggested change to LBR 1007.1 (adopted at April '06 meeting for implementation in March 2007.)

SO 06-03 requires a certification in every case, indicating whether the debtor is attaching pay advices, or that the debtor does not have pay advices, and why.

The Committee had adopted a change to 1007.1 (initial filings) at its March 06 meeting, at paragraph (a)(2)(F), to require an affidavit or certification only if the debtor was not required to file payment advices or other evidence of payment pursuant to § 521 of the Code:

(F) copies of payment advices or other evidence of payment, if any, with all but the last four numbers of the debtor's Social Security Number redacted, received by the debtor from an employer within 60 days before the filing of the petition, **or, a certificate from the debtor stating that the debtor has not had an employer within the 60 days prior to the filing of the petition;**

After some discussion, it was agreed that it was good practice, and the bar was accepting

of the practice, to file the certificate in compliance with the Standing Order, so the Committee agreed we should incorporate the SO 06-03 language into LBR 1007.1, and then rescind SO 06-03. Incorporating the suggested changes, LBR 1007.1(F) and the Declaration would now read:

- F) A Declaration Regarding Payment Advices or Evidence of Payment under 11 U.S.C. § 521(a)(a)(B)(iv), in compliance with Appendix 1-01 to LBR 1007.1, that the debtor has either not been employed by any employer within the 60 days before filing of the petition, that the debtor was employed within the 60 days, but has not received payment advices or other evidence of payment, or that copies of payment advices or other evidence of payment are attached (with all but the last four numbers of the debtor's Social Security Number redacted).

Appendix 1-01 to LBR 107.1(F)
(Must be filed by every individual debtor)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

In Re:)
) Case No.
Debtor(s).)

**DECLARATION REGARDING PAYMENT ADVICES OR EVIDENCE
OF PAYMENT UNDER 11 U.S.C. § 521(a)(1)(B)(iv)**

I declare (or certify, verify, or state) under penalty of perjury that the following is true and correct (CHECK ONE OF THESE BOXES):

☐

I have not been employed by any employer within the 60 days before the date of the filing of the petition.

☐

I was employed by an employer within 60 days before the date I filed my bankruptcy petition, but I have not received some or all of the payment advices or other evidence of payment because:

_____.

☐

I have received payment advices or other evidence of payment within 60 days before the date I filed my bankruptcy petition from any employer, and they are attached, except

_____.

Executed on _____ (date) by _____ (debtor).

Judge Karlin made a motion to re-amend 1007.1 to incorporate SO 06-03 with modifications, and then to rescind SO 06-03. Doug Depew seconded the motion. Motion was voted on and approved. Judge Karlin volunteered to draft the changes and circulate it.

3. **D. Kan. LBR 5075.1(a)(1).** Subsection (c) to D. Kan. LBR 5075.1(a)(1) should be removed because it erroneously suggests an order is needed in a situation where one counsel is merely substituting for another counsel, simultaneously. It presently reads:

LBR 5075.1
ORDERS BY BANKRUPTCY CLERK; REVIEW

(a) Orders.

- (1) The clerk is authorized to sign and enter the following orders without further direction by the court:

....

- (C) a consent order for the substitution of attorneys;**

This language thus actually conflicts with D. Kan. 83.5.5 (Withdrawal of Appearance), which states that “Substitution of counsel admitted to practice in this court is authorized without an order of the court. Substitution of counsel may be accomplished by the filing of a pleading entitled 'Withdrawal of Counsel and entry of Appearance of Substituted Counsel' signed by the attorney withdrawing and the attorney to be substituted ...”

Judge Karlin made a motion to remove (a)(1)(C) from 5075.1. Doug Depew seconded the motion. Motion was voted on and approved.

4. **Effective and expiration dates on Standing Orders.** Standing Orders are supposed to have an express effective date, and an express expiration date (unless it is noted that it remains in effect until “further order of the Court.” All of them infer an effective date (IT IS SO ORDERED this x day of y), but some don't indicate either their expiration date or that they shall remain in effect until further order of the court. *See e.g.* 05-1, 05-3, 05-4, 05-7, 06-1, 06-03. Should we leave them alone, or amend to add an expiration date, remembering that we retain the number given until a change is made in the rule, and then we give it a number in the year it becomes effective?

Judge Nugent mentioned that each year he receives an email from Vicky Parks in the Circuit Executive's office regarding our use of standing orders because the Judicial Conference frowns on standing orders. The Clerk's Office will work on incorporating the standing orders into the local rules.

5. **SO 05-06.** Should this now be abrogated (adopting interim local rules - we already effectively tossed them March '06 by adopting them in full)?

The Judges agreed they will rescind SO 05-06.

6. **Provide briefs in electronic form.** Should we add a sentence in **D. Kan LBR 9013.1(d)** making it clear that the court can request an electronic copy of any brief filed for its use in drafting the Memorandum and Order.

Judge Karlin made a motion to add the sentence: **The court may request that any brief be provided by electronic means.** Chris Redmond seconded the motion. Motion was approved. LBR 9013.1(d) will now read:

- (d) **Additional Copies of Briefs for Court.** The court may order the party filing a brief or document to deliver additional working copies to the clerk for use by the judge. **The court may request that any brief be provided by electronic means.**

7. **Does our 9013.1(c) conflict with the 10th Circuit rules? Do we need to make a change to ours?**

(c) **Citation of Unpublished Decisions.** An unpublished decision cited in a brief or memorandum shall be attached as an exhibit to the memorandum or brief only if it is unavailable via electronic means (e.g., Westlaw or LEXIS). Unpublished decisions that are available via electronic means shall not be furnished to the court and shall be furnished to opposing parties only upon request.

After some discussion, it was agreed that no change was needed.

8. **Conclusion of 341.** In a Chapter 7 case, once the 341 is complete, the trustee makes a text entry that states “Meeting Conducted and Concluded”-- no date of when the meeting was actually held/concluded is noted, so if the Trustee doesn’t get that docketed for a few days after the 341, it is difficult to know what date the 341 actually occurred. You can usually divine the date from the pleading that sets the 341 meeting or continued/adjourned 341 meeting, but it is certainly not definitive when the meeting was actually concluded.

Should we require trustees to alter what the text entry says to indicate when the 341 was actually concluded? The issue is important when an objection to exemption, for example, has to be filed within 30 days from date the 341 is concluded.

It was agreed that this issue would be better addressed in a CLE setting, so no new rule was promulgated.

9. **Change to D. Kan. Rule 83.5.4(c) - (Judge Karlin)**

Judge Karlin just wanted to bring the new D. Kan rule change to everyone's attention; it does not require any changes to our rules.

10. **Amended Federal Rules/Official Forms**

New rules may require changes to our local rules. Do we want to re-start subcommittees to keep an eye on these changes? This issue will be put on hold for now.

11. Reaffirmation Agreements (Jay Befort)

After considerable discussion, it was the consensus that the court will not require debtor's counsel to appear when they decline to sign the Reaffirmation Agreement. A rule will not be necessary.

12. Rule 26(f) parties' planning meeting reports (J. Befort)

If the report is submitted timely, parties typically will not need to appear. Bar is receptive to not doing hearings. After considerable discussion, no action was taken at this time.

(A lunch break was taken, after which:)

13. Certificate of Exigent Circumstances - Form for exemption from 109(h) credit counseling pre-filing requirement - Certificate/Affidavit of exigent circumstances - modify to require detailed statement of the claimed exigent circumstances. Procedure for notice and hearing to allow creditors or other parties in interest to object and have a hearing on the basis for the "exemption." - (R. Kumin)

After some discussion, Judge Karlin volunteered to revise the form and will circulate it. (After the meeting, it was learned that the form that the committee had been given to review had already been changed 5-10-06. Judge Karlin forwarded the comments of the Committee to the Judges, and the judges have decided to revise the 5-10-06 form, as follows:

CERTIFICATION OF EXIGENT OR CRITICAL CIRCUMSTANCES

The above-named debtor requests a waiver of the requirement to have credit counseling completed pre-petition pursuant to §109(h). In support of the request, debtor states:

1. I requested credit counseling on _____(date) from the following approved credit counseling agency (or agencies) _____.
2. I was unable to obtain the required credit counseling services during the five (5) day period from the date I made the initial request of the agency/agencies.
3. The Circumstances that cause me to ask for the waiver of the pre-petition credit counseling requirement, and which constitute "exigent circumstances" under 11 U.S.C. §109(h), are:

_____.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____.

Signed: _____

Name: _____

Address: _____

City/State/Zip: _____

Phone: _____

(*Note: If joint debtor case, a separate certificate must be filed by both debtors.)

Effective 2/6/06; revised 5/10/06; revised 9/5/06

14. Noticing plan in Chapter 11 (W. Smith)

Form says plan has to be *mailed* to matrix. It was agreed that the form needs to be corrected.

- 15. LBR 4001(a).1** - Should we amend to add a statement in stay relief motion asserting the existence or non-existence of a mobile or manufactured home on real estate - (S. Saidian)

After considerable discussion, no action was taken at this time.

16. Chapter 13 issues (Laurie B. Williams)

A. Procedures in Chapter 13 for debtor not eligible for discharge due to prior discharge in Chapter 7/13 within the requisite time period.

For informational purposes, cases are being flagged where there is a prior 7 in the requisite time period, so debtors are entitled to relief under 13 but are not entitled to receive discharge. At this time there is nothing in the system to *prevent* a discharge from being entered.

B. Procedures for determining § 1322(b)(5)(mortgage) claims current

Laurie Williams reports that this is a big issue and will require some more study. She will be gathering forms from various other courts and will have something at a later date.

17. Other Matters

A. The filing fee in installments issue. We are in the process of getting that fixed in-house.

B. Article for KBA Journal. Judge Karlin would like to have an Notice placed in the KBA Journal saying that the comment period for our local rule changes will begin on November 1. [Since the BB meeting, Judge Karlin has learned the following is the timetable for publication: November 20--Begin period for public comment, December 20--End period for public comment, February 2--Submit final copy to printer, March 6--Mail to attorneys, March 17--Effective date].

Jay Befort suggested having an article in the KBA Journal summarizing the last couple of years rule changes showing what impact the changed rules have had. He would be willing to

facilitate that.

Doug Depew suggested that the Bench Bar Committee minutes be made available on the Court's website.

The meeting was adjourned at 2:35 p.m.